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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

) MUR 6838

) Unknown Respondent

) CELA

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

We recommend that the Commission: (1) substitute the name Joseph Aosey in the place of "Unknown Respondent" in the Commission's previous findings that Unknown Respondent violated 52 U.S.C. §§ 30104(c) and 30120(a); (2) find reason to believe that Aosey violated 52 U.S.C. § 30104(g) by failing to file 24-hour independent expenditure notices; (3) take no further action other than to approve a letter of caution as to Aosey's violations of 52 U.S.C. §§ 30104(c), 30104(g), and 30120(a); (4) approve the attached Factual and Legal Analysis; and (5) close the file.

II. BACKGROUND

The Complaint in this matter alleged that a postcard mailer distributed in Cedar Rapids, Iowa, that references three federal candidates "appear[s] to be a violation of federal law" because "the entity claiming to have sent the postcard is unregistered under either federal or state law."¹ The postcard bears the photographs and names of two federal candidates and two state candidates, with the words, "Vote Tuesday June 3rd" and "Vote for Representation that works for YOU!"² The back of the mailer, to the left of the addressee area, contains the name of a third federal candidate, with a large question mark below this name, and below that, in smaller typeface, "After 22 years in the

¹ Compl. at 1.

² See First Gen. Counsel's Rpt. at 2.

1 Iowa House[,] why are our roads so bad?" Below this wording, in small typeface, the mailer
2 contains the disclaimer, "Paid for by Voters for Better Government." Finally, the mailer contains a
3 bulk mail permit imprint. The mailer contains no return address.

4 The Commission found reason to believe that Unknown Respondent violated 52 U.S.C.
5 §§ 30104(b) or (c) and 30120(a) of the Federal Election Campaign Act of 1971, as amended (the
6 "Act"), by failing to report expenditures made in connection with the mailer and by failing to include
7 a compliant disclaimer on the mailer, and authorized the use of compulsory process, if necessary, to
8 determine the identity of Unknown Respondent and the costs of the mailer.³ The Commission took
9 no action on whether the expenditures associated with the mailer required disclosure on a 24-hour
10 report under 52 U.S.C. § 30104(g).⁴ We have now completed the investigation. The results of the
11 investigation are detailed below, along with our recommendations for how the Commission should
12 proceed with this matter.

13 III. SUMMARY OF INVESTIGATION

14 During the investigation, we were able to identify the person who paid for the mailer, the
15 amount disbursed, and that the mailer was sent six days before the primary election along with
16 an additional, nearly identical mailer. Specifically, the District Business Mail Entry Office of the
17 U.S. Postal Service in Cedar Rapids, Iowa, identified Adcraft Printing and Mailing ("AdCraft")
18 of Cedar Rapids, Iowa, as the holder of the bulk mail permit used to distribute the mailer.⁵ Brian

³ See Certification, MUR 6838 (Nov. 23, 2015); First Gen. Counsel's Rpt. at 7-8.

⁴ See Certification, MUR 6838 (Dec. 2, 2015). The Commission originally found reason to believe that Unknown Respondent violated 52 U.S.C. §§ 30104(b) or 30104(c), 30104(g), and 30120(a). See Certification, MUR 6838 (Nov. 23, 2015). The Commission subsequently rescinded its reason-to-believe finding that Unknown Respondent violated 52 U.S.C. § 30104(g) and instead took no action at that time. See Certification, MUR 6838 (Dec. 2, 2015).

⁵ Letter from Sharon Mere, Business Mail Entry, United States Postal Service (Dec. 14, 2015).

1 Gallagher, the owner of AdCraft, provided specific information about the creation and
2 dissemination of the mailers. Gallagher stated in an interview that Joseph Aosey of Cedar
3 Rapids, Iowa, had requested that AdCraft, a general commercial printing company, develop and
4 distribute two mailers.⁶ According to Gallagher, Aosey provided AdCraft with the photos and
5 text for the mailers on or around May 22, 2014.⁷ Gallagher stated that, when he requested a
6 disclaimer for the mailers, Aosey provided him with the disclaimer, "Paid for by Voters for
7 Better Government."⁸ AdCraft then created the two mailers for Aosey.⁹

8 AdCraft delivered the mailers to the U.S. Post Office on May 28, 2014,¹⁰ just days prior
9 to the June 3 Iowa primary election. AdCraft distributed 5,678 copies of the mailer at issue in
10 the Complaint to residents of Linn County, and 4,029 copies of the second mailer, which was
11 identical to the mailer attached to the Complaint but omitted a photograph of one local candidate,
12 to residents of Dubuque, Iowa.¹¹ AdCraft distributed both mailers using the same bulk mail
13 permit number.¹² Gallagher reported that Aosey paid to AdCraft a total of \$3,250 by personal
14 check for the mailers.¹³

⁶ Report of Investigation of Interview of Brian Gallagher ("Gallagher ROI") at 1 (Jan. 12, 2016).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.* Gallagher provided copies of both mailers to the Commission, which can be found in the Voting Ballot Matters folder.

¹² *Id.*

¹³ *Id.*

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1 Once AdCraft identified Aossey as the individual who paid for the mailers, we notified
2 Aossey about the allegations made in the Complaint and offered him an opportunity to respond.¹⁴
3 In his Response, Aossey conceded that he was responsible for the mailers but "was not involved
4 at the time with any of the campaigns of the four people pictured on the postcard."¹⁵ Aossey
5 stated that he was not aware of the requirements of the Act at the time he printed the mailer.¹⁶

6 IV. LEGAL ANALYSIS

7 A. Disclaimer

8 As set forth in the Commission's Factual and Legal Analysis, the disclaimer on the
9 mailer does not satisfy the requirements of the Act and Commission regulations because it lacks
10 any statement regarding whether a candidate authorized the mailer.¹⁷ Moreover, it appears that
11 this partial disclaimer is false because it states that Voters for Better Government paid for the
12 mailer when, in fact, our investigation revealed that Aossey paid for the mailer. Because we
13 have identified Aossey as the individual who paid for the mailers, we recommend that the
14 Commission substitute Aossey's name in the place of "Unknown Respondent" in the

¹⁴ See Memorandum from the Office of the General Counsel to the Commission (Jan. 19, 2016); Letter from Kathleen Guith, Acting Assoc. Gen. Counsel for Enforcement, FEC, to Joseph Aossey (Feb. 2, 2016).

¹⁵ Resp. at 1.

¹⁶ *Id.* We received a request from the Complainant to withdraw the Complaint. See Letter from Bob Rush, Rush & Nicholson (Mar. 17, 2016). The letter states, "Please let this letter serve as my request that this complaint be withdrawn." The letter provides no additional information or the Complainant's basis for withdrawal. On March 25, 2016, this Office sent a letter to the Complainant in response to this request for withdrawal, noting that "[a] request for withdrawal of a complaint will not prevent the Commission from taking appropriate action under the Act" and that the request will become part of the public record after the closing of the case. Letter from Mark Allen, Asst. Gen. Counsel, FEC, to Robert Rush, Rush & Nicholson (Mar. 25, 2016).

¹⁷ Factual & Legal Analysis at 2-4 ("F&LA"). Under the Act and Commission regulations, any public communication that expressly advocates the election or defeat of a clearly identified candidate must include a disclaimer. See 52 U.S.C. § 30120(a); 11 C.F.R. §§ 100.22(a), 110.11(a)(2), (c)(2).

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Commission's previous finding that there is reason to believe that Unknown Respondent violated 52 U.S.C. § 30120(a) by failing to include a compliant disclaimer on the mailer.

B. Disclosure of Independent Expenditures

The expenditures for the mailers exceeded \$250. Therefore, pursuant to 52 U.S.C. § 30104(c), Aosey should have, but did not, disclose those expenditures to the Commission in an independent-expenditure report covering the relevant quarterly reporting period.¹⁸ We recommend, therefore, that the Commission substitute Aosey's name in the place of "Unknown Respondent" in the Commission's previous findings that there is reason to believe that Unknown Respondent violated 52 U.S.C. § 30104(c) by failing to report expenditures made in connection with the mailer.¹⁹

Furthermore, a person that makes independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election, must file a report describing the expenditures within 24 hours.²⁰ Because the mailers at issue were distributed on May 28, 2014, six days before the June 3, 2014 primary election, and because the amount expended on the mailers exceeded \$1,000, Aosey was also required to, but did not, disclose the disbursements related to the mailers by a 24-hour independent expenditure notice. Accordingly,

¹⁸ F&LA at 4-5; *see* 52 U.S.C. § 30104(c) (requiring a person other than a political committee who makes independent expenditures exceeding \$250 to file an independent-expenditure report with the Commission).

¹⁹ The Commission previously found reason to believe that Unknown Respondent violated 52 U.S.C. § 30104(b) or (c) of the Act because it did not have the information necessary information at that time to ascertain whether the mailer was disseminated by a political committee or an individual or entity other than a political committee. *See* Certification, MUR 6838 (Nov. 23, 2015) (emphasis added). Because the evidence available to the Commission indicates that Aosey worked independently in funding the mailers, *see* note 22 *infra*, Aosey appears to have violated 52 U.S.C. § 30104(c).

²⁰ 52 U.S.C. § 30104(g)(1)(A). Political committees and other persons must file 24-hour notices by 11:59 p.m. on the day following the date on which the independent expenditure communication is publicly distributed. *See* 11 C.F.R. §§ 104.4(c), 109.10(d).

we recommend that the Commission find reason to believe that Joseph Aosey violated 52 U.S.C. § 30104(g).

C. The Amount in Violation Does Not Warrant Further Commission Action

The full cost of the mailers at issue here was \$3,250. In previous matters involving similar facts and amounts in violation, the Commission has not pursued these cases on the basis that the apparent cost of the communication was *de minimis*.²¹ Furthermore, the evidence available to the Commission indicates that Aosey was solely responsible for the mailers and did not collaborate with a political campaign.²² We therefore conclude, consistent with prior similar matters, that this matter does not warrant the resources involved in further enforcement proceedings.²³ Accordingly, we recommend that the Commission take no further action as to Aosey's violations of 52 U.S.C. §§ 30104(c), 30104(g), and 30120(a) other than to issue a letter of caution.²⁴

V. RECOMMENDATIONS

1. Substitute the name Joseph Aosey in the place of "Unknown Respondent" in the Commission's previous findings that Unknown Respondent violated 52 U.S.C. §§ 30104(c) and 30120(a).
2. Find reason to believe that Joseph Aosey violated 52 U.S.C. § 30104(g).
3. Take no further action other than to issue a letter of caution as to Joseph Aosey's violations of 52 U.S.C. §§ 30104(c), 30104(g), and 30120(a).

²¹ See, e.g., MUR 6642 (Christopher Kauffman) (taking no further action on partial disclaimer and independent expenditure reporting violations and issuing a letter of caution where cost of billboards at issue amounted to \$3,000); MUR 6377 (Harry Reid Votes) (dismissing allegation as to radio advertisement with partial disclaimer and issuing a letter of caution where cost of advertisement was \$2,135).

²² Aosey stated in his Response that he "was not involved at the time with any of the campaigns of the four people pictured on the postcard." Resp. at 1.

²³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

²⁴ We intend to request in the letter of caution that Aosey file the required 24-hour independent-expenditure report with the Commission.

4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letter.
6. Close the file.

5/26/16

Date

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